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No. 88-79

Supreme Court, U.S.  
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**In the Supreme Court of the United States**

OCTOBER TERM, 1988

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**\$173,081.04 IN U.S. CURRENCY, ET AL., PETITIONERS**

**v.**

**UNITED STATES OF AMERICA**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### **QUESTIONS PRESENTED**

1. Whether a material misstatement or omission on a currency report must be knowingly made in order for the monetary instruments to be subject to forfeiture under 31 U.S.C. (Supp. III) 5317(c).

2. Whether a currency report under 31 U.S.C. (& Supp. III) 5316 may be orally amended after it is filed on entry into the United States.



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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1A-12A) is reported at 835 F.2d 1141. The opinion of the district court (Pet. App. 13A-19A) is reported at 652 F. Supp. 1468.

## **JURISDICTION**

The judgment of the court of appeals was entered on January 22, 1988. A petition for rehearing was denied on April 13, 1988. The petition for a writ of certiorari was filed on July 12, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

The government instituted this action for civil forfeiture under 31 U.S.C. (Supp. III) 5317(c), alleging that Raul Arvizo-Morales filed a report under 31 U.S.C. (& Supp. III) 5316 containing a material misstatement or omission when he transported \$194,209.04 in monetary instruments from Mexico to the United States. After a bench trial in the United States District Court for the Western District of Texas, the court ordered the forfeiture of the amount in question. The court of appeals affirmed.

1. The facts are summarized in the opinions of the court of appeals and district court (Pet. App. 4A-5A, 14A-15A). Raul Arvizo-Morales is an employee of Casa de Cambio Juarez, a money exchange business located in Juarez, Mexico. On April 23, 1986, Francisco Arvizo-Morales, the principal owner of Casa de Cambio and Raul's brother, told Raul to take certain funds to the Texas Commerce Bank in El Paso, Texas. Raul Arvizo-Morales then completed the Customs Form 4790 Report of International Transportation of Currency or Monetary Instruments, indicating that Casa de Cambio was depositing currency of \$172,081.04 and checks totaling \$70,772.55 into its account at the Texas Commerce Bank.

Shortly before Raul Arvizo-Morales departed, his brother told him to take \$19,685.04 from the currency and to deliver it to Don Peso's Money Exchange House in El Paso as payment for pesos purchased by Casa de Cambio a day earlier. Raul counted out a sum of money and placed it in a paper grocery bag, leaving the rest of the currency and the checks in a nylon sports bag. He then left for El Paso without revising the Form 4790 report to reflect that the money was being taken to two different destinations.

When Arvizo-Morales arrived at the border, he presented the Form 4790 report to the Customs agent. After



reviewing the report, the agent asked whether the report was correct, and Arvizo-Morales replied that it was. The agent then asked Arvizo-Morales to get the currency and checks so that he could verify the amounts. Arvizo-Morales went back to his truck, and he returned with the two bags. The agent asked whether all the money in both bags was being taken to the Texas Commerce Bank, and Arvizo-Morales indicated for the first time that \$19,685.04 in the grocery bag was being taken to Don Peso's. When asked why he had not disclosed that information on the form, Arvizo-Morales shrugged his shoulders and replied that he should have done so. The agent counted the currency in both bags, and he found \$20,685.04 — \$1000 more than Arvizo-Morales had mentioned — in the grocery bag. The agent and Arvizo-Morales then separately counted the currency, and each came out with a total of \$1000 more than the amount declared on the form. At that point, Arvizo-Morales made a request to change the Form 4790 report. Denying that request, the agent seized all of the currency and checks because the reported amount of currency was off by \$1000 and the report neither listed Don Peso's as a destination nor indicated that Arvizo-Morales was acting as an agent for Don Peso's.<sup>1</sup>

2. The district court ordered the \$173,081.04 in currency and a personal check in the amount of \$21,128 forfeited because the Form 4790 report submitted by Arvizo-Morales failed to list Don Peso's as a destination for part of the currency (Pet. App. 13A-19A). The district court found that Arvizo-Morales' "misstatement was 'knowingly' made," since Arvizo-Morales knew about the reporting requirements and was also aware of the misstate-

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<sup>1</sup> The agent subsequently returned nonnegotiable checks totaling \$46,644.49 because such checks need not be reported on Form 4790. See 31 U.S.C. 5312(a)(3).

ment concerning the destination of the currency (*id.* at 16A-17A). The district court also found that the misstatement was material because "it related to matters which are central to the reporting requirement" (*id.* at 17A).

The district court also rejected petitioners' argument that the agent was obligated to allow Arvizo-Morales to amend the Form 4790 report after he admitted his misstatement, because the court found "no support for this position in the law or regulations" (Pet. App. 17A). The district court also rejected petitioners' claim that only the \$19,685.04 destined for Don Peso's should be forfeited, since 31 C.F.R. 103.48 makes clear "that all the monetary instruments being transported in one 'batch' are subject to seizure and forfeiture if a material misstatement or omission is made with respect to any part of the transaction, and that the Secretary of the Treasury, not the trial court, has the discretion to remit or mitigate forfeiture" (Pet. App. 19A).

3. A divided panel of the court of appeals affirmed the forfeiture but on reasoning somewhat different from that of the district court (Pet. App. 3A-12A). The court first rejected petitioners' claim that forfeiture was unwarranted because the failure to list Don Peso's as a destination was the result of an accident, inadvertent mistake, or innocent error. The court agreed that a party must have knowledge of the reporting requirements before his money is subject to forfeiture under Section 5317(c), but concluded that the statutory language "does not require examination of the party's mental state and the district court's finding of a 'knowing' misstatement was therefore unnecessary" (Pet. App. 7A). The court accordingly held that "the claimant's money became subject to forfeiture when Arvizo-Morales tendered the materially incorrect Form 4790 to [the agent], regardless of whether the reporting error was intentional or inadvertent" (*ibid.*).

The court of appeals also rejected petitioners' claim that Arvizo-Morales had successfully amended his Form 4790 report under 19 C.F.R. 148.16 when he told the agent before the bags were inspected that the currency in the grocery bag was destined for Don Peso's. The court observed that, "[a]lthough the Treasury Department might sensibly promulgate a regulation permitting amendments to Form 4790 reports for the purpose of correcting inadvertent errors, it has not done so, and there is no suggestion in the language of 19 C.F.R. § 148.16 or elsewhere that renders it susceptible to application in currency forfeitures" (Pet. App. 7A).<sup>2</sup>

Judge Politz dissented (Pet. App. 10A-12A). Without identifying any specific statute or regulation to support his view, Judge Politz suggested that Arvizo-Morales should have been entitled to correct any innocent errors or omissions in his Form 4790 reports. He concluded that the "purpose of the currency disclosure legislation is not served by today's harsh result" (Pet. App. 12A).

### ARGUMENT

1. Petitioners first contend (Pet. 6-11) that monetary instruments may not be forfeited under 31 U.S.C. (Supp. III) 5317(c) unless the material misstatement or omission on the filed report was knowingly made, rather than the result of an accident, inadvertent mistake, or innocent error. The court of appeals correctly rejected that contention.

At the time of the seizure and forfeiture in this case, Section 5317(c) provided that "[a] monetary instrument being transported may be seized and forfeited to the

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<sup>2</sup> The court also agreed with the district court that all of the \$194,209.04 at issue, and not just the portion of that money that was destined for Don Pedro's, was subject to forfeiture (Pet. App. 7A-9A). Petitioners have not challenged that holding in this Court.

United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.”<sup>3</sup> Unlike other currency reporting provisions, the language of Section 5317(b) provides no basis for concluding that the filing party must knowingly make the misstatement or omission in the report. Cf. 31 U.S.C. 5316(a) (“knowingly \* \* \* transports”); 31 U.S.C. 5322 (“willfully violating”). Indeed, the plain language of Section 5317(c) requires only that the misstatement or the omission in the report be “material”—as it concedely was in this case (see Pet. App. 5A-6A)—before the filing party’s monetary instruments become subject to forfeiture. Consequently, once the filing party enters the United States and presents a report containing a material omission or misstatement, Section 5317(c) authorizes the forfeiture of the monetary instruments regardless of whether the reporting error was intentional or inadvertent.<sup>4</sup>

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<sup>3</sup> The first sentence of Section 5317(c) was amended effective October 27, 1986, by the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, Tit. I, § 1355, 100 Stat. 3207-22, and now provides (31 U.S.C. (Supp. IV, 5317(c)):

If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.

<sup>4</sup> Petitioners rely (Pet. 8-9) on the legislative history and the decision in *United States v. One Lot of \$24,900 in U.S. Currency*, 770 F.2d 1530 (11th Cir. 1985), to demonstrate that Congress intended that the filing party have knowledge of the reporting requirements before a forfeiture is authorized. That demonstration does not help them, however, since the court of appeals agreed with that proposition (Pet. App. 6A). And, as the court of appeals observed, it was undisputed in this case that petitioners were “well aware” of the reporting

At bottom, petitioners' claim (Pet. 10-11) is simply that a forfeiture is unduly harsh when the misstatement or omission in the report is the result of an accident, inadvertent mistake, or innocent error.<sup>5</sup> Although we agree that a forfeiture in such circumstances can sometimes be harsh, the Secretary of the Treasury is authorized to exercise his discretion to remit or mitigate any forfeiture "in whole or in part upon such terms and conditions as he deems reasonable." 31 C.F.R. 103.48; see also 31 U.S.C. 5321(c) ("[t]he Secretary may remit any part of a forfeiture" under Section 5317(c)). As the court of appeals noted (Pet. App. 8A n.7), it appears that Congress intended that forfeitures for mistaken or innocent violations of Section 5317(c) be remedied through that administrative mechanism. S. Rep. 91-1139, 91st Cong., 2d Sess. 7 (1970) (The Secretary has discretion to remit any part of a forfeiture "to prevent ordinary citizens or businessmen from being unduly penalized for an inadvertent violation."); see also H.R. Rep. 91-975, 91st Cong., 2d Sess. (1970). Because that administrative scheme is expressly designed to mitigate the harsh effects of forfeitures that are based on innocent or inadvertent misstatements, the court of appeals correctly concluded that it would be inappropriate to infer that Section 5317(c) itself, contrary to its plain language, requires

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requirements; the only dispute was whether the particular misstatement contained in the Form 4790 report constituted a knowing violation of those requirements (*ibid.*).

<sup>5</sup> Petitioners' suggestion (Pet. 11) that their position is similar to that of other travelers who might face forfeiture for innocently omitting their date of birth on the form or failing to enter the proper date of the form rests on an obviously flawed analogy. Unlike petitioners' failure to list the proper destination of all the currency, a traveler's omission of his date of birth or failure to date the report would not be considered a "material" omission or misstatement in the absence of unusual circumstances.

that a material misstatement in the report be knowingly made.<sup>6</sup>

2. Petitioners also contend (Pet. 8, 11-14) that monetary instruments may not be forfeited under Section 5317(c) if the report is orally amended before the discovery of any material ~~omission~~ or misstatement in the report. That contention is plainly without merit.

Petitioners' contention that a report under Section 5316 may be orally amended is based solely on a tariff regulation, 19 C.F.R. 148.16, which allows a passenger to add an article to his declaration in certain limited circumstances.<sup>7</sup> By its terms, however, that regulation does not apply to a report filed under 31 U.S.C. (& Supp. III) 5316. As the court of appeals concluded, "there is no suggestion in the language of 19 C.F.R. § 148.16 or elsewhere that renders it susceptible to application in currency forfeitures" (Pet. App. 7A). Moreover, nothing in the currency reporting regulations even remotely suggests that a report can be

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<sup>6</sup> We note that the court of appeals expressly ruled that its decision in this case was "entered without prejudice to claimants' exercise of administrative remedies" (Pet. App. 9A (footnote omitted)).

<sup>7</sup> 19 C.F.R. 148.16 provides:

(a) *Before examination.* A passenger shall be permitted to add an article to his declaration if, before examination of his baggage has begun, the fact that the article has not been declared is brought to the attention of the examining officer by the passenger.

(b) *After examination is begun.* A passenger shall be permitted to add an article to his declaration after examination of his baggage has begun if, before any undeclared article is found, the passenger advises the examining officer that he has such an article and the officer is satisfied that there was no fraudulent intent. Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

orally modified once it is filed upon entry into the United States. Cf. 31 C.F.R. 103.26(b) (filing of reports). The court of appeals therefore correctly rejected petitioners' contention that Arvizo-Morales validly amended his Form 4790 report when he told the agent that the currency in the grocery bag was destined for Don Peso's.

#### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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